Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 4200 /2005 [S.B.]

[DATE OF PRESENTATION 24.08.2005]

PETITIONER :- Minor Dipika D/o Setram,
PLAINTIFF Aged about 11 years, Student, Through- next friend Setram S/o Jharu Dhoba, aged about 45 years, Occupation- Labourer, R/o village Sutupali, P.S. Pusour, District Raigarh [C.G.].

P.R. No. 4318/05
Presented by Shri Pravin Tulsyan
dated 24/8/05

VERSUS

RESPONDENTS :- 1] The C.G. State Electricity Board
DEFENDANTS Through- Executive Engineer,
C.G. S.E.B. Raigarh, District Raigarh [C.G.].

2] The Assistant Engineer,
C.G. State Electricity Board,
Raigarh, District Raigarh [C.G.].

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

A.F.R. 84

HIGH COURT OF JUDICATURE AT BILASPUR

(CHHATTISGARH)

Writ Petition No.4200 of 2005

Minor Dipika

- Versus -

The C.G. State Electricity Board & another

Writ Petition No.4201 of 2005

Minor Nalini

- Versus -

The C.G. State Electricity Board & another

POST FOR ORDER ON 12th SEPTEMBER, 2005

Sd/-
L.C. Bhadoo
Judge

24 (25)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

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- Versus -

The C.G. State Electricity Board & another

Present: -

Shri Malay Kumar Bhaduri, Advocate: For the petitioners.

Shri Abhishek Sinha, Advocate: For the respondents.

O R D E R

(Passed on 24 September, 2005)

Before Hon'ble Mr. L.C. Bhadoo, J.

1. Writ Petition No.4200/2005 filed by Minor Dipika through her next friend Setram against the C.G. State Electricity Board & Writ Petition No.1804/2005 filed by Minor Nalini through her next friend Ganesh Dhoba against the C.G. State Electricity Board are being disposed of by this common order, as in these writ petitions similar question of law is involved.

2. By these writ petitions the petitioners have questioned the legality, propriety and correctness of orders dated 10.8.2005 passed by learned District Judge, Raigarh in Civil Suit Nos.5A/2004 & 6A/2004 whereby learned District Judge has rejected the applications filed on behalf of the petitioners under Order 16 Rule 1 read with Section 151 of the Code of Civil Procedure (hereinafter shall be referred to as 'the Code') for

(26)

summoning the witnesses along with original records mentioned in the applications.

3. Brief facts leading to filing of these writ petitions are that the petitioners herein, who are students of Government Primary School, Sutupali, have filed the above mentioned civil suits before the District Court, Raigarh for awarding compensation against the respondents on the ground that on account of negligence of the respondents the petitioners had suffered electric shock when they were in school. After issuance of summons, the respondents herein have filed their written statement. On 5.2.2005 learned District Judge framed issues arising out of the pleadings of the parties and on that day itself counsel for both the parties orally submitted that each of the party wants to examine five witnesses, therefore, the petitioners were directed to file affidavit as per provisions of Order 18 Rule 4 of the CPC. Admittedly list of witnesses have not been filed by the parties. On 03.08.2005 applications under Order 16 Rule 1 read with Section 151 of the CPC were filed on behalf of the petitioners in their respective suits for summoning the witnesses along with original records named in the said applications. Reply of the said applications was filed on behalf of the respondents. Learned District Judge vide impugned orders rejected the applications of the petitioners on the ground that as no list of witnesses has been filed by the petitioners, therefore, they are not entitled to summon the witnesses, as the provisions of Order 16 Rules 1 & 1A of the CPC are subject to sub-rule (3), therefore, witnesses cannot be summoned.

4. Returns of these petitions have not been filed on behalf of the respondents.

5. I have heard learned counsel for the parties.

6. Shri M.K. Bhaduri, learned counsel for the petitioners argued that the prayer for summoning the witnesses was made because all the witnesses are government employees and documents are part of government record and as the same are not within the power & control of petitioners, therefore, the learned District Judge ought to have summoned these witnesses along with record. He further argued that since some of the documents were kept in the office of petitioners' earlier counsel namely Shri Ashok Mishra, Advocate, who has been prosecuted by the State in a criminal case and has been in judicial custody, therefore, petitioners were not in a position to submit those documents. As such, in the given situation, the petitioners were left with no option but to summon the government witnesses and records, which are mentioned in the said applications. Accordingly, the petitioners have been able to show sufficient cause for summoning witnesses and documents.

7. On the other hand, Shri Abhishek Sinha, learned counsel for the respondents opposed the writ petitions and supported the orders passed by the learned District Judge, Raigarh.

8. Having heard learned counsel for the parties, I have perused the impugned orders, other records and also the applications filed by the petitioners before learned District Judge, Raigarh.

9. In order to appreciate the controversy as to interpretation of the provisions of Order 16 Rule 1 sub-rules (1) to (3) and Rule 1A, it

would be profitable to have a glance to the scheme of the Code with regard to the summoning and attendance of the witnesses. The provisions of Section 30 of the Code provides that "*subject to such conditions and limitations as may be prescribed, at any time either of its own motion or on the application of any party- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid; (c) order any fact to be proved by affidavit.*" Rule 1 of Order 16 deals with list of witnesses and summons to witnesses which contemplates that "*on or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.*' Sub-rule (2) entitles a party to obtain summons for the attendance of any person by filing an application with the purpose for which the witness is proposed to be summoned. Sub-rule (3) provide that "*the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.*" Rule 1A entitles a party that "*subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.*" Rule 7 authorizes the Court that " *any person present in Court may be required by the Court to give evidence or to produce any document*

then and there in his possession or power." Rule 14 empowers the Court to examine any person including a party to the suit and not called as a witness by a party to the suit, when it thinks necessary and the Court may, of its own motion, cause such person to be summoned as a witness to give evidence or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document. Therefore, Sub-rule (1) of Rule 1 of Order 16 of the Code provides that *'parties shall present a list of witnesses whom they propose to call either to give evidence or to produced documents, on or before such date, as the Court may appoint, and not later than fifteen days after the date on which the issues are settled. Fifteen days is the outer limit fixed by the Legislature for submission of the list of witnesses after settlement of the issues.'* Sub-rule (2) makes a provision that in case a party is desirous of obtaining any summons for the attendance of any person it shall file an application stating therein the purpose for which the witnesses are proposed to be summoned. Sub-rule (2) would be attracted when summons are obtained by the party. Sub-rule (3) provides that where the names of the witnesses have been omitted in the list submitted under sub-rule (1), then the Court may permit a party to call those witnesses, if the party shows sufficient cause for the omission of the names of the witnesses and while permitting the party to call such witnesses the Court is required to record reasons. Rule 1A empowers a party to the suit to bring any witness to give evidence or to produce documents, without obtaining any summons, but this right has been subject to the provisions of sub-rule (3) of Rule 1.

10. Now the question which has been posed by learned District Judge while rejecting the applications of the petitioners that as no list of witnesses has been filed by the petitioners and Rule 1A is subject to sub-rule (3), therefore, the petitioners are not entitled to summon any of the witnesses or documents, it is true that no specific provision has been made under this rule that where no list of witnesses has been filed by a party even then on showing sufficient cause by moving an application party can summon the witnesses. In the given situation, we have to interpret the provisions of sub-rules 1 to 3 of Order 16 Rule 1. In this connection, now we may consider the principles, which guide the interpretation of procedural laws.

11. In the matter of **Sangram Singh V. Election Tribunal, Kotah** reported in **AIR 1955 SC 425**, the Hon'ble Apex Court has observed as under:-

> "Now a code of procedure must be regarded as such. It is 'procedure, something designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) less the very means designed for the furtherance of justice be used to frustrate it."
>
> "Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men

should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course there must be expectations and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso our laws of procedure should be construed, wherever that is reasonably possible in the light of that principle."

12. In the matter of **State of Gujarat V. Ramprakash P. Puri** reported in **1970 (2) SCR875** the Hon'ble Apex Court has held that:

" Procedure has been described to be a hand-maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause"

It is useful to quote the oft-quoted passage of Lord Penzance in 1879 (4) AC 504:

"Procedure is but the machinery of the law after all the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern when it ought to subserve."

It is also useful to reproduce the passage of judgment in the case of Balwant Singh Bhagwansingh Vs. Firm Raj Singh Baldev Kishen reported in AIR 1969 Punjab & Haryana 197:

> "Promptitude and dispatch in the dispensation of justice is a desirable thing but not at the cost of justice. All rules of procedure are nothing but handmaids of justice. They cannot be construed in a manner, which would hamper justice. As a general rule, evidence should never be shut out. The fullest opportunity should always be given to the parties to give evidence if the justice of the case requires it. It is immaterial if the original omission to give evidence or to deposit process fee arises from negligence or carelessness.

13. The Hon'ble Apex Court in the matter of **Vidhyadhar V Manikrao** reported in **AIR 1999 SC 1441** while interpreting the provisions of Order 16 sub-rules (1 to 4) of Rule 1 summarized the legal position in paragraphs 30 & 31:

> "30. These two Rules read together clearly indicate that it is open to a party to summon the witnesses to the Court or may, without applying for summons, bring the witnesses to give evidence or to produce documents. Sub-rule (3) of Rule 1 provides that although the name of a witness may not find place in the list of witness filed by a party in the Court, it may allow the party to produce a witness though he may not have been summoned through the Court. Rule 1A which was introduced by the Code of Civil Procedure (Amendment) Act, 1976 with effect from

1-2-1977 has placed the matter beyond doubt by providing in clear and specified terms that any party to the suit may bring any witness to give evidence or to produce documents. Since this Rule is subject to the provisions of sub-rule (3) of rule, all that can be contended is that before proceeding to examine any witness who might have been brought by a party for that purpose, the leave of the Court may be necessary but this by itself will not mean that Rule 1A was in derogation of sub-rule (3) of Rule 1. The whole position was explained by this Court in Mange Ram V Brij Mohan, AIR 1983 SC 925: (1983) 4 SC 36: (1983) 3 SCR 525, in which it was held that sub-rule (3) of Rule 1 and Rule 1A operate in two different areas and cater to two different situations. It was held (para 10 of AIR): -

> There is no inner contradiction between sub-rule (1) of Rule 1 and Rule 1A of Order XVI. Sub-rule (3) of Rule 1 of Order XVI confers a wider jurisdiction on the Court to cater to a situation where the party has failed to name the witness in the list and yet the party is unable to produce him or her on his own under Rule 1A and in such a situation the party of necessity has to seek the assistance of the Court under sub-rule (3) to procure the presence of the witness and the court, may if it is satisfied that the party has sufficient cause for the omission to mention the name of such witness in the list filed under sub-rule (1) of Rule 1, the court may still

extend its assistance for procuring the presence of such a witness by issuing a summons through the Court or otherwise which ordinarily the Court would not extend for procuring the attendance of a witness whose name is not shown in the list. Therefore, sub-rule (3) of Rule 1 and Rule 1A operate in two different areas and cater to two different situations.'

31. In view of the above, even though the name of Defendant No.2 was not mentioned in the list of witnesses furnished by the plaintiff, he was properly examined as a witness and his testimony was not open to any criticism on the ground that he was produced as a witness without being summoned through the Court and without his name being mentioned in the list of witnesses."

14. The High Court of Karnataka in the matter of **Rehman Hussain V. Althaf Hussain and another** reported in **AIR 2004 Karnataka 172** has held that:

"....if the provisions of sub-rule (1) is read with the provisions of sub-rule (3) conjointly, it can be seen that in a case where a party has not filed list of witnesses at all or where he has filed a list of witnesses but has not included names of all witnesses, his right to seek permission of the Court under sub-rule (3) to call any witness, is not taken away. The word, "any witness" should be given natural and full meaning and such a course would also advance the cause of justice. The word 'any' in

ordinary, literal parlance means 'each and every', in other works, without any exception."

15. If we look into the provisions of Rule 1 of Order 16, a clear cut provision has not been made in respect of the situation where no list of witnesses at all has been filed by a party, whether in that case the party is entitled to summon a witness or document or may bring the witness or document himself/herself. But, it is also clear that in Rule 1 of Order 16 a clear cut prohibition has also not been made that if any party fails to file the list of witnesses as envisaged under Rule 1 of Order 16 then the party will not be entitled to seek leave of the Court by filing an application even showing sufficient cause to summon any witness. It does not impose an embargo on the power of the Court to summon the witness or document, as the case may be.

16. The Hon'ble Apex Court while interpreting the provisions of Order 8 Rule 1 of the Code in the matter of **Kailash V Nanhku and others** reported in **2005 AIR SCW 2346 held** that:

> "The provisions of O.8, R.1 fixing time schedule for filing of written statement are directory and not mandatory. The purpose of providing the time schedule for filing the written statement under O. VIII, R.1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to R.1 of O.VIII of CPC is couched in negative form, it does not specify any penal consequence flowing from the non-compliance.

The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by O.VIII, R.I of the CPC is not completely taken away.

As the said provision is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom should be by way of exception."

17. The above observations were made by the Hon'ble Apex Court while interpreting the provisions of Rule 1 of Order 8 of the CPC whether the court is entitled to extend the time beyond 90 days for filing written statement, which has been provided as a maximum time to file written statement. The Court held that law being procedural and in exceptional cases the court is not debarred from extending the time beyond 90 days, which has been fixed under Rule 1 of Order 8. Similarly, in the matter of **Salem Advocate Bar Association, Tamil Nadu V. Union of India** reported in **2005 AIR SCW 3827** the Court held that;

"The question is whether the Court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period have not

been provided for in Order VIII Rule 1. The rules in question to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

18. The above principle should guide the Courts, while interpreting the procedural laws. The object of the Legislature in introducing Rule 1 & Rule 1A appears to be speedy disposal of the cases and it does not appear to be the object behind Rule 1 to deprive a party to examine witnesses, if he has failed to submit the list of witnesses. By putting an interpretation that in the absence of list of witnesses no witness can be examined and the Court is powerless to permit a party to examine its witnesses, even when it shows sufficient cause for not filing the list of witnesses, it would amount to imposing procedural tyranny and throttling course of justice, which could not have been the intention of the legislature. When the courts have been conferred with powers to examine any witness present in court under Rule 7 or to examine or summon any witness under Rule 14 and Section 30(b), then in the light of the powers under Section 30(b), Rules 7 and 14 of Order 18, Rule 1 is required to be interpreted. Section 30(b) Rules 7 & 14 of Order 18 clearly indicate that the courts primarily exist for dispensing real and substantial justice and if they are to impart only technical justice, the court will never require to examine any

witness of their own accord. Powers under Section 30(b), Rules 7 and 14 have only been conferred with a view to impart justice to the parties.

19. As has been held by the Hon'ble Apex Court in the above cited cases while interpreting the procedural laws too technical, too rigid and too strict, a view is not required to be taken, unless the legislature completely deprives the Court from the exercise of the discretionary powers. The rules of procedure are made to advance the cause of justice and not to defeat it and the construction of rule or procedure, which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress, the natural and purposeful & meaningful meaning should be given to the words and such a course would also advance the cause of justice. Sub-rule (3) in an un-mistakable term provides that a party with the permission of Court can call any witness and examine such witness in support of his case. The words *'other than those whose names appear in the list referred to in sub-rule (1)'* occurring in sub-rule (3) are meant only to highlight the obvious position that with regard to those witnesses whose names are already included in the list of witnesses filed under sub-rule (1) of Rule 1, seeking permission of the Court to examine such witnesses will never arise or is unnecessary. That phrase does not in any way restrict or limit the power of the Court under sub-rule (3) to permit any party to call any witness and examine him in support of his case, of course, only on showing sufficient cause as to why he has not included the name or names of such witness/witnesses in the list of witnesses already filed by him or why he could not file the list

of witnesses at all within the stipulated time of 15 days after the date of settlement of issues.

20. In the light of above law on the subject, if we look into the facts of the present case, on the date when the issues were framed counsel for both the parties had orally submitted that each of the party will examine five witnesses. In the applications filed under Order 16 Rule 1 read with Section 151 of the Code for summoning the Station House Officer, Police Station Pussour, Head Master, Primary Government School, Sutupali and Chief Medical Officer, Raigarh along with relevant records, it has been mentioned that copies of some of the documents they have already filed and remaining original record is in possession of police authorities, hospital authorities and the headmaster of the said school where the petitioners were studying and therefore, it is necessary to summon those witnesses along with original records. It has further been mentioned in the applications that some of their documents were with their original counsel Shri Ashok Mishra, Advocate, unfortunately, he has been prosecuted by the police and in the judicial custody, therefore, they could not find out those documents. Therefore, it will be justified to summon those witnesses along with original records.

21. In view of the above facts, I am of the considered opinion that sufficient cause was shown by the petitioners to summon the government officials along with original government records which was not in possession & power of the petitioners, as the petitioners are minor girls, who are studying in the school and they received the injuries in the school on account of electric shock and they want to place on record the original record which

is in possession of the school authorities to show that even some letters were sent by the school authorities to the respondents-department to remove the electric line which was dangerous to the life of school children. Therefore, in order to give a meaningful & purposive interpretation to sub-rules 1 & 3 of Rule 1 of Order 16 and in order to advance the cause of justice, the learned District Judge ought to have allowed the applications and ordered for summoning of the government officials along with original records and for that purpose the petitioners have shown sufficient cause. Accordingly, the orders impugned passed by learned District Judge, Raigarh are perverse and not in consonance with the settled principles of law and legal provisions contained under Rule 1 of Order 16, therefore, same are liable to be quashed.

22. In the result, for the foregoing reasons, the writ petitions are allowed, impugned orders are hereby quashed and learned District Judge, Raigarh is directed to proceed with the case and pass orders on the applications of the petitioners in the light of this order.

Sd/-
L.C. Bhadoo
Judge

Roshan/-